

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer for acquired lands. ES-32788.

Affirmed.

1. Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Offers to Lease

BLM must reject a noncompetitive oil and gas lease offer for land determined to be within the known geologic structure of a producing oil or gas field, even where the determination has been made long after submission of the offer. The offeror has no vested right to a lease by virtue of submission of the offer or the lengthy delay in its processing.

2. Oil and Gas Leases: Known Geologic Structure

Designation of land as situated within a known geologic structure of a producing oil or gas field will be sustained on appeal where there is a reasonable probability the land is underlain by at least one sandstone body in a particular formation which has been determined to be productive in that area, and appellant fails to establish by a preponderance of the evidence that the designation is in error.

APPEARANCES: Wally J. Picou, pro se; Kenneth G. Lee, Esq., Assistant Solicitor, Branch of Eastern Resources, U.S. Department of the Interior, Alexandria, Virginia, for the Bureau of Land Management.

#### OPINION BY ADMINISTRATIVE JUDGE MULLEN

Wally J. Picou has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated July 11, 1985, rejecting his noncompetitive oil and gas lease offer for acquired lands, ES-32788, because the land had been determined to be within a 25,600-acre addition to the Gragg-Booneville Field known geologic structure (KGS), designated effective June 28, 1985.

By decision dated February 14, 1984, BLM notified appellant he was the first-priority drawee for parcel No. ES-123 in the July 1983 simultaneous oil and gas lease drawing. Parcel No. ES-123 is described as 133.49 acres of acquired land situated in secs. 2 and 3, T. 5 N., R. 27 W., fifth principal meridian, Logan County, Arkansas. In its February 1984 decision, BLM required appellant to submit executed copies of his lease offer, with attached stipulations, and the first year's advance rental payment "within 30 days from the date of your receipt of this decision." (Emphasis omitted.) On March 5, 1984, appellant filed executed copies of his lease offer and paid the first year's advance rental.

By memorandum dated July 2, 1985, the Acting BLM District Manager, Jackson District Office, notified the State Director that, "[b]ased on past drilling activity and established production," the land in appellant's lease offer had been determined to be within the Gragg-Booneville Field KGS. In its July 1985 decision, BLM rejected appellant's lease offer, stating the land was within a KGS and was, thus, "not available for noncompetitive leasing." This appeal followed.

BLM has provided the Board with a copy of the "Geologic Report," dated June 28, 1985, which provides the justification for the June 1985 expansion of the Gragg-Booneville Field KGS. According to the report, expansion of the KGS was based on a reasonable inference that a productive or presumptively productive zone in the Atoka Formation underlies the KGS extension. 1/ Geologic Report at 5. The report noted that, on the basis of "[n]umerous producing or shut-in wells," BLM had determined the Atoka Formation has "many sands capable of producing gas in the Arkoma Basin," particularly the Upper/Lower Borum, Basham, Nichols, Turner, and Upper Atoka. Id. at 4, 5. The report noted that the producing wells are located "near the center of this KGS extension." Id. at 5. The report stated that most of the gas occurs in "stratigraphic traps which are formed by the many lenticular sandstones and by differences in porosity and permeability in blanket-like sandstones." 2/ Id. at 3. The report stated that "porosity values range from 8-25% with permeability values as high as 500 md." Id. at 4. The report rated the risk factor of drilling a dry hole at 50 percent. Id. at 4.

In his statement of reasons for appeal, appellant contends that the "non-impartial treatment of this lease by unpardonable delay constitutes deprivation of my Constitutional rights to obtain this lease in a timely manner." Appellant also argues that the KGS determination was not based on "scientific [g]eological information." In support of his appeal, appellant has submitted a September 5, 1985, letter from Gordon N. Blair, a consulting geologist, who questions whether productive strata can be inferred to underlie the land involved herein given the "very erratic nature of Atokan sands"

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1/ The report described the "depositional environment" of the Atoka Formation as "deltaic, submarine fans and abyssal plains." Geologic Report at 2.

2/ The report also noted that east-west trending faults constitute the "primary structural trapping mechanism," with anticlines and synclines having "little influence." Geologic Report at 2.

and the absence of "direct evidence [from drilling] of hydrocarbons in the recently added KGS lands, or in adjacent sections." Copies of portions of "Oil and Gas Charts 2 and 3" prepared by Boyd R. Haley of the U.S. Geological Survey and published in 1982 by the Arkansas Oil and Gas Commission are attached as exhibits to Blair's September 1985 letter. These charts display a portion of an electric log cross-section between wells in the area of the land involved herein, i.e., B-9 to B-11 (portion of B-B') and C-11 to C-13 (portion of C-C'). <sup>3/</sup> The charts state that a "[c]orrelation of the different types of rocks [below zone 58 in the Atoka Formation] cannot be established" south of B-9 and C-12. One of these two wells is northeast and the other is northwest of the land involved herein. Blair notes the "[m]iddle to lower Atokan (zone 50 and below) rocks seem to be the major producers in the Gragg-Booneville field." Blair concludes the inability to "correlate Atokan stratigraphy through the area" also makes it "difficult if not impossible to make any real interpretation of the subsurface hydrocarbon potential without actually drilling on the site" and further undermines BLM's KGS determination.

The Office of the Solicitor has filed an answer on behalf of BLM, contending appellant has failed to rebut BLM's KGS determination, and the BLM determination is based on "more complete" and "more recent information." An October 2, 1985, memorandum of the District Manager, responding to appellant's statement of reasons is attached to BLM's answer. The District Manager states that at the time of publication of "Oil and Gas Charts 2 and 3" in 1982 "little data was available to the south of the Chismville and Booneville Fields," and the nearest production was "over four miles away" in secs. 9, 10, and 12, T. 6 N., R. 27 W., fifth principal meridian, Arkansas. However, he notes that between January 1983 and June 1985, 21 wells were drilled in that township:

The wells closest to the lands in Federal oil and gas lease application ES-32788 are the Davis "U" #1 (S 1/2 Section 29, N 1/2 Section 32, T. 6 N., R. 27 W.); # 1 Mehelich (S 1/2 Section 27, N 1/2 Section 34, T. 6 N., R. 27 W.) and the Wilkins "A" #1 (S 1/2 Section 24, N 1/2 Section 25, T. 6 N., R. 27 W.). \* \* \* The southern edge of the #1 Mehelich drilling unit across the center of section 34, T. 6 N., R. 27 W. is approximately one-half mile from the tracts in ES-32788.

Gas production is from the Upper Borum in the Davis "U" #1, #1 Mehelich and the Wilkins "A" #1. TXO geologists have projected Upper Borum Sands to be present under the land in ES-32788 \* \* \*.

<sup>3/</sup> Cross-section B-9 to B-11 runs from the F. A. Borum No. 1 well situated in sec. 18, T. 6 N., R. 28 W., fifth principal meridian, Arkansas, to the C. J. Williams well situated in sec. 10, T. 4 N., R. 29 W., fifth principal meridian, Arkansas. Cross-section C-11 to C-13 runs from the K.W. Homer No. 1 well situated in sec. 20, T. 7 N., R. 26 W., fifth principal meridian, Arkansas, to the P. Garner No. 1 well situated in sec. 29, T. 5 N., R. 26 W., fifth principal meridian, Arkansas. These cross-sections bracket the land involved herein to the west and east.

The District Manager concludes that the criteria for a KGS determination have been met, *i.e.*, "producing or shut-in wells nearby and a presumptively productive trap underlying the land."

[1] It is well established that the Secretary of the Interior and his delegated representatives have no authority under section 17 of the Mineral Leasing Act, *as amended*, 30 U.S.C. § 226 (1982), to issue a noncompetitive oil and gas lease for land which has been determined to be within a KGS of a producing oil or gas field. *McDonald v. Clark*, 771 F.2d 460 (10th Cir. 1985); *McDade v. Morton*, 353 F. Supp. 1006 (D.D.C. 1973), *aff'd*, 494 F.2d 1156 (D.C. Cir. 1974). Such land is only available for leasing pursuant to competitive bidding, in accordance with the regulations in 43 CFR Subpart 3120. Therefore, the Department is required to reject a noncompetitive oil and gas lease offer where the land has been determined to be within a KGS at any time prior to issuance of a lease. *Carolyn J. McCutchin*, 93 IBLA 134 (1986), and cases cited therein.

We recognize the June 1985 KGS determination in the present case was made after appellant had participated in the July 1983 simultaneous oil and gas lease drawing and over a year after appellant filed his lease offer. <sup>4/</sup> However, neither submission of the lease offer nor the delay in processing the offer gave rise to any "Constitutional [or other] rights to obtain [a] lease." *Hrubetz Oil Co.*, 93 IBLA 343 (1986); *E. B. Joiner*, 78 IBLA 323 (1985), and cases cited therein. As the court stated in *Angelina Holly*

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<sup>4/</sup> We have no specific explanation for the delay in processing appellant's lease offer. However, during this period there was increased sensitivity on the part of the Department regarding the potential for issuing noncompetitive leases for land which should have been designated as within a KGS. Indeed, the Department suspended the simultaneous oil and gas leasing program in October 1983, precluding the issuance of leases "that were not processed and completed prior to October 12, 1983, until it is determined that they are not located within a KGS." 48 FR 49703, 49704 (Oct. 27, 1983). In Instruction Memorandum (IM) No. 84-35, dated Oct. 14, 1983, the Director, BLM, explained that "[r]ecent situations involving oil and gas noncompetitive leasing in Arkansas, Texas, and Wyoming have identified procedural practices that failed to define properly the extent of Known Geologic Structures." In IM No. 84-255, dated Feb. 3, 1984, the Director stated the suspension had been lifted. He instructed the State directors to clearlist "pre-September 1983 parcels, except for difficult/problematic areas." (Emphasis in original.)

We note appellant's lease offer contains a notation that the land was clearlisted by the District Manager as not being with a KGS on Mar. 1, 1985. However, the Geologic Report indicates the KGS extension was in large part based on data from wells completed between Feb. 9, 1983 and May 31, 1985. We can surmise BLM further delayed issuance of the lease in order to permit an evaluation of this additional drill data. This action would have been fully consistent with the Department's statutory obligation not to issue noncompetitive leases for land which should properly be designated as within a KGS. *Sherbourne Partnership*, 90 IBLA 130 (1985); *Joseph A. Talladira*, 83 IBLA 256 (1984).

Corp. v. Clark, 587 F. Supp. 1152, 1157 (D.D.C. 1984), "Interior is under no duty to act within a certain time limit."

[2] We, therefore, reach the question of whether BLM properly designated the land in appellant's lease offer as within a KGS. In these circumstances, appellant has the burden of establishing by a preponderance of the evidence that the KGS determination was in error. Bender v. Clark, 744 F.2d 1424 (10th Cir. 1982); Carolyn J. McCutchin, supra.

A KGS is defined by the Department as the "trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive." 43 CFR 3100.0-5(1). (Emphasis added.) Once it is demonstrated through geologic or other evidence that there is a reasonable probability the land is underlain by a structural and/or stratigraphic trap or a series of related traps containing oil or gas in commercial quantities that land is considered to be "presumptive productive." Thunderbird Oil Corp., 91 IBLA 195 (1986), appeal filed, Planet Corp. v. Hodel, Civ. No. 86-679HB (D.N.M. June 10, 1986); B. K. Killion, 90 IBLA 378 (1986); Angelina Holly Corp., 70 IBLA 294 (1983), aff'd, Angelina Holly Corp. v. Clark, supra.

We conclude the record supports BLM's finding of a reasonable probability that the land in appellant's lease offer is underlain by a series of related predominantly stratigraphic traps in the Atoka Formation containing gas in commercial quantities. The record does not establish conclusively that the land is entirely underlain by a particular continuous trap, which itself has been determined to be productive, or a particular series of related traps, which themselves have been determined to be productive. However, it is sufficient for the purposes of a KGS designation that BLM has determined the land to be underlain by various sands in the Atoka Formation, which wells in the area have determined to be productive. <sup>5/</sup> Thus, there is a reasonable probability that the sands underlying the land in appellant's lease offer will, likewise, be productive of gas in commercial quantities. See Thunderbird Oil Corp., supra; B. K. Killion, supra; Thomas Bohr, Jr., 89 IBLA 384 (1985), aff'd, Bohr v. Hodel, Civ. No. C 86-057-K (D. Wyo. Oct. 24, 1986).

Appellant has not rebutted BLM's KGS determination by a preponderance of the evidence. He relies first on Blair's assessment of the "erratic nature of Atokan sands," and the absence of drilling in the area of appellant's lease offer. We assume first that Blair meant the unpredictable productivity of "Atokan sands." However, the additional information gained as a result of the more recent drilling in the area of appellant's lease offer, included in the June 1985 BLM Geologic Report, itself indicates certain "Atokan sands" in the area are productive of gas. This gives rise to a reasonable probability that such sands underlying the land in appellant's lease offer will also be productive. Appellant has not established by a preponderance of the evidence that there is no reasonable probability of productivity.

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<sup>5/</sup> As noted supra, these sands are identified by BLM in the June 1985 Geologic Report as the Upper/Lower Borum, Basham, Nichols, Turner, and Upper Atoka.

Appellant next relies on the inability to predict with certainty the existence of these productive sands underlying the land in appellant's lease offer. We note the June 1985 BLM Geologic Report includes various exhibits (Figures 2A, 2B, 2C, 3A, 3B, and 3C), depicting the structural top of the Middle Atoka and the gross sand of the Upper Borum "B," which were prepared by TXO Production Corp. (TXO) on the basis of various wells drilled in the area and apparently submitted to the Arkansas Oil and Gas Commission. 6/ These exhibits indicate the land involved herein is underlain by the Middle Atoka and the Upper Borum "B." Appellant has offered no evidence to rebut this conclusion except the 1982 "Oil and Gas Charts 2 and 3," which were unable to correlate any Atokan stratigraphy through the area of appellant's lease offer. This evidence is considered to be outdated by BLM in view of what has been learned from further drilling activity since publication of the charts. Appellant has simply not challenged BLM's reliance on the results of this additional drilling.

Designation of land as within a KGS necessarily cannot be based on geologic certainty because of the unpredictability of the geologic occurrence of oil and gas. However, it must be supported by relevant facts and sound scientific reasoning which give rise to a conclusion there is reasonable probability of the existence of a structural and/or stratigraphic trap or series of traps containing a commercially productive oil and gas deposit at depth. In order to prevail, one challenging a KGS designation must demonstrate by a preponderance of the evidence either that there is no reasonable probability that the producing structure underlies the land, or that the facts demonstrate the land involved is not productive from the structure in question. Thunderbird Oil Corp., supra at 102. We conclude that appellant has not met this burden. 7/ Accordingly, we hold BLM properly rejected appellant's

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6/ The wells relied upon by TXO were the Davis "U" No. 1 completed on Mar. 7, 1985, in sec. 29, T. 6 N., R. 27 W., fifth principal meridian, Arkansas, the Gardner "E" No. 1 situated in sec. 28, T. 6 N., R. 27 W., fifth principal meridian, Arkansas, and the Wilkins "A" No. 1 completed on Jan. 3, 1985 in sec. 24, T. 6 N., R. 27 W., fifth principal meridian, Arkansas. 7/ In his Sept. 1985 letter, Blair states that, despite numerous telephone calls to BLM offices, he was "unable to find what exact new geologic information caused the addition \* \* \* to the Gragg-Booneville field KGS." Appellant, in his statement of reasons filed Sept. 23, 1985, requested "additional time to present further evidence as to the unfounded nature of KGS Status of the \* \* \* lands [in his lease offer], the time requested being whatever is necessary for BLM to provide proper data to my geological consultant." In its answer, BLM states that, with the exception of proprietary information or information otherwise exempt from public disclosure, the June 1985 Geologic Report was "available to appellant," and that, in any case, "most of the information relied on by [BLM] is publicly available." We are unclear as to the early efforts made by appellant to obtain the Geologic Report. There is no indication appellant has made any additional effort to secure the report. It is possible appellant has in the interim obtained the relevant information by other means. Moreover, appellant has not renewed his request for additional time to present further evidence nor did he take the opportunity to respond

noncompetitive oil and gas lease offer for land situated within the Gragg-Booneville Field KGS.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

Will A. Irwin  
Administrative Judge

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fn. 7 (continued) to BLM's answer which incorporated the District Manager's analysis of appellant's Statement of Reasons. In the interest of expediting a resolution of this matter, we hereby deny appellant's original request for additional time to present evidence in support of his appeal.

